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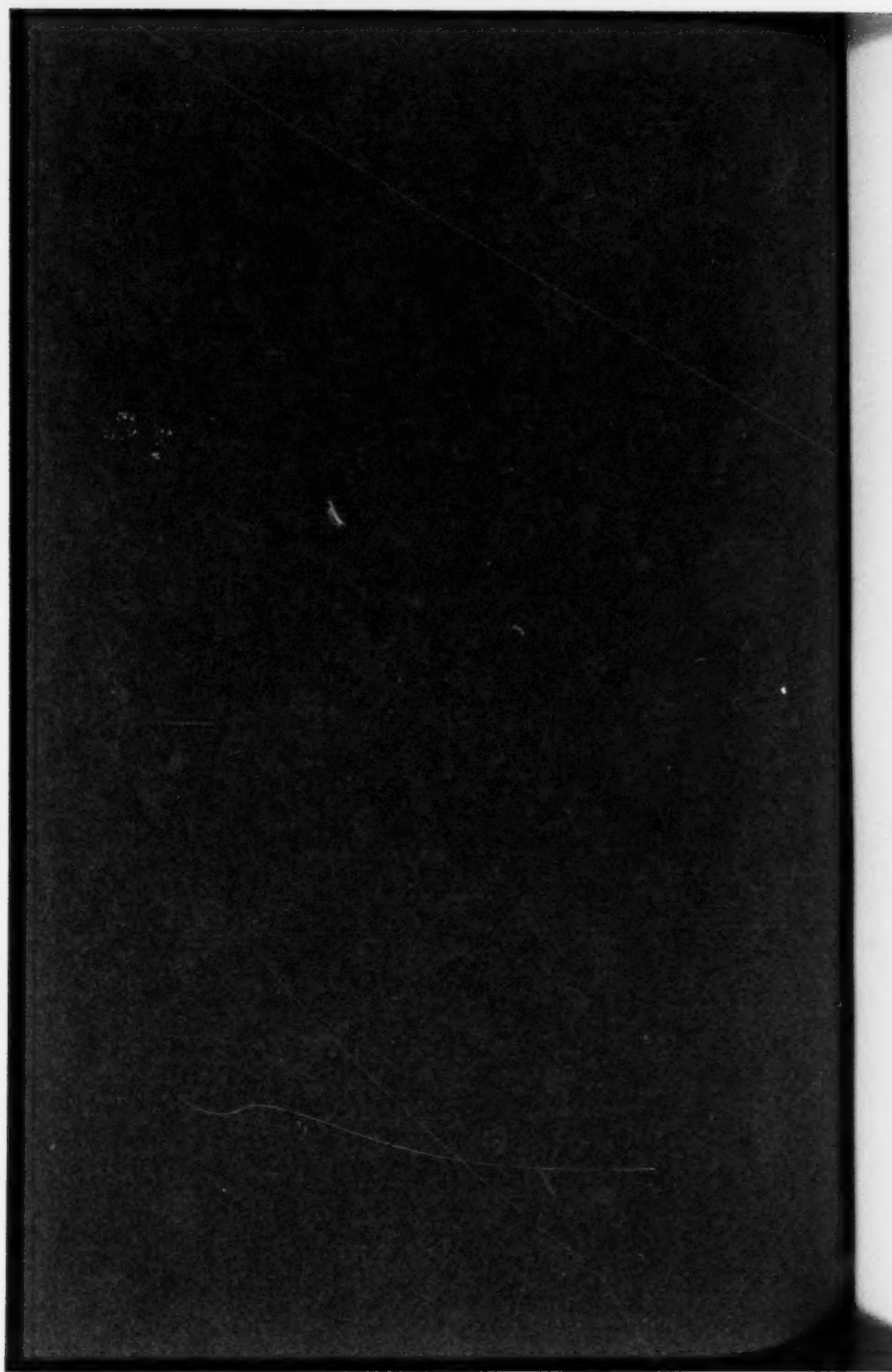


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Supreme Court of the United States

OCTOBER TERM, 1941.

No. 923

THE PHILLIPS PIPE LINE COMPANY, A CORPORATION,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR REHEARING A PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

The Petition for Writ of Certiorari herein was denied by an order of this Court dated May 4, 1942. That Petition seeks review of a decision of the Court of Claims.

I.

The Decision of the Court of Claims.

The Petitioner sued to recover taxes it had paid, under protest, on the pipe line shipment of natural gasoline and butane. The lower Court held such shipments taxable under a statute (now Sec. 3460 of the Internal Revenue Code) which provides:

“There is hereby imposed upon all transportation of crude petroleum and liquid products thereof by pipe line . . . a tax equivalent to 4 percentum of the amount paid . . . for such transportation . . .”

Both natural gasoline and butane are manufactured from natural gas. The question in the case is, then, whether natural gas products are products of "crude petroleum"—that is, whether natural gas is "crude petroleum."

On this question the lower Court found:

" 'Crude petroleum' is a broader term than 'crude oil' and includes the total hydrocarbon substances in the reservoir. Natural gas, crude oil, asphalt, paraffin wax are all parts of crude petroleum." *Finding 22*, second paragraph (R. 32)

Consequently the lower Court concluded that natural gasoline is a product of crude petroleum. (R. 33) It made no such finding with respect to butane, so one must simply assume that butane was similarly regarded.

The finding just quoted was based upon an alleged scientific definition of "crude petroleum" which, it was said, includes natural gas as well as crude oil. *Finding 22*, first paragraph (R. 32) This definition was adopted despite the fact that the Court also found that among operators and dealers, in statutes and government publications, and in the official specifications adopted by the American Society for Testing Materials (the standard authority in the gas and oil industry), the term "crude petroleum" is understood and used to mean crude oil and *not* to include natural gas. Findings 18 and 19 (R. 29-31)

II.

The Effect of the Lower Court's Decision.

The statute involved taxes the transportation of crude petroleum as well as its liquid products. Since the decision below holds transportation of natural gas products taxable on the ground that natural gas is crude petroleum, the transportation of natural gas itself must be taxable. The statute is not confined to *liquid* crude petroleum and its products—it reaches *all* crude petroleum. If it were confined to *liquid* crude petroleum and its products, then the products of a *gas* would not be taxable and the basis for the lower Court's decision would disappear.

Hence the effect of the decision below is that the taxing statute embraces the whole natural gas industry. Virtually all natural gas is transported by pipe line. See *Petition*, at p. 19.

III.

The Petitioner's Position.

The decision below falls into grave errors, as set forth in the *Petition*. Among the chief of these is its definition of "crude petroleum" to include natural gas in the face of unusually complete evidence which discloses no such use of the term; rather the term is used in both scientific and common parlance as synonymous with crude oil and as *not* including natural gas. See *Petition*, at pp. 13-15. Indeed, the lower Court's own findings are, as indicated above, that among others than scientists the term does *not* include natural gas. *Findings* 18 and 19 (R. 29-31)

The lower Court based its definition of "crude petroleum" upon arguments made by certain expert witnesses to the effect that, *in their personal opinions*, the term *ought* to be used by people to include natural gas because of asserted scientific considerations bearing on the composition of hydrocarbons. See *Petition*, at pp. 15-17; see *Brief in Opposition*, at p. 9. To adopt such arguments and to reject definitions commonly understood and widely established sharply departs from the necessary judicial assumption that Congressmen speak in the language of ordinary men. *Hale v. State Board of Assessment and Review*, 302 U. S. 95, 101 (1937).

How false is the foundation for the lower Court's decision is shown in the very testimony it relies upon. One of these experts, a professor, after elaborating upon the chemistry of hydrocarbon matter, in support of what he conceived to be an "exact" meaning of the term "crude petroleum", was confronted with his own notes which he distributed to his classes. The notes consistently and repeatedly used the terms "petroleum" and "crude petro-

leum" as synonymous with "oil" or "crude oil", *not including gas*; the notes *never* used the term "crude petroleum" to include gas. (R. 619-621) The witness' refuge was to refuse to admit the authenticity of the notes (R. 578-584); they were, however, fully identified otherwise. (R. 617, *et seq.*)

Such evidence as this confirms the necessity for adhering to definitions which are shown to be well established, and for refusing to adopt obscure definitions "scientifically" constructed—the latter are too easily made for the purpose of the case.

The decision below should be reviewed by an appellate court because of its great economic importance.

As already indicated, the effect of the decision is to make the tax applicable to the whole natural gas industry. This industry has become of major importance. In 1939 nearly two and a half trillion cubic feet of natural gas, worth over half a billion dollars, were consumed in this country. See *Petition*, at p. 19.

Yet at no time since the adoption of the pipe line tax here involved, over ten years ago, has the Bureau of Internal Revenue applied it to the transportation of natural gas. (R. 616-1617) And the legislative history of the statute discloses that Congress did not intend that it should apply to natural gas. See *Petition*, at pp. 21-24. This is admitted by the Respondent. See *Brief in Opposition*, at p. 10.

In these circumstances the decision below should receive this Court's consideration.

IV.

The Respondent's Position.

The Brief in Opposition says that the lower Court's adoption of a scientific definition of "crude petroleum" is sound. *Brief in Opposition*, at p. 9. In saying so the Brief cross-refers to its statement of that definition at page 5 of the Brief. That statement is that scientists employ the

term to denote "the entire hydrocarbon content of a reservoir, *natural gas included . . .*"

To this point the Brief is at least consistent in supporting the lower Court. But it then proceeds at once (p. 10) to say that "natural gas *is excluded*" from the statute's words, "crude petroleum".

To say that a product of natural gas is a product of crude petroleum because crude petroleum includes natural gas, and *then* to say that natural gas is *not* included in crude petroleum, on successive pages of the Brief, is extraordinary.

The only apparent reason for this swift *volte-face* is that the Respondent could hardly deny the necessity for appellate review of a decision the effect of which would be to subject natural gas to the pipe line tax. Yet, as the Respondent is at pains to point out, the decision below stands squarely on the proposition that natural gas is "crude petroleum". *It must follow that natural gas would be subject to the tax.*

V.

A Writ of Certiorari Should Be Issued.

The present is no time to deny to the public purse very substantial revenues which are its due. Every cent of revenue which Congress has provided for should be collected.

Yet if the Petition herein is not granted the matter remains in this posture: Natural gasoline is taxed by a decision resting on the proposition that natural gas is crude petroleum and this proposition, the government says, is sound. But the government then holds that the decision is not sufficiently important to review because, it asserts, natural gas is not subject to the tax on crude petroleum. *This amounts to a renunciation of millions of dollars of revenue.*

Whether or not the Petitioner is right in its interpretation of the statute, the government's position now can not possibly be correct.

The matter can be straightened out by reviewing the decision below and determining whether natural gas and its several products are subject to the pipe line tax. The question is of real economic and fiscal importance and should be decided authoritatively.

The present case, for reasons indicated in the Petition (at pp. 9-10), is the appropriate test case; moreover, we are informed that an appeal in the one other similar case, referred to in the Petition (at p. 9), has now been dismissed upon the motion of the appellant in that case. There is but little likelihood that the question will again come before this Court.

For these reasons, and for the reasons heretofore stated in the Petition, the order denying the Petition should be reconsidered and the Petition should be granted.

Respectfully submitted,

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